

**City of San José**  
**Request for Qualifications**

**NOTICE TO INTERESTED CONSULTANTS**

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**February 19, 2008**

**The CITY OF SAN JOSE invites Statement of Qualifications submittals for**

**ENGINEERING CONSULTANT DESIGN SERVICES**

For

**Auxiliary Chilled Water System for the City Hall Network Operations Center**

This Request for Qualifications solicitation has been developed in accordance with the City of San José, Council adopted, Qualifications Selection Process to encourage participation of well-qualified engineering consultants available to provide the services and expertise necessary to satisfy the varied program requirements for City Projects. The City Qualifications Based Consultant Selection (QBCS) policy encourages participation by qualified Engineers while promoting broad competition, local and small business participation and diversity in the marketplace. Qualification Based Consultant Selection represents the City's intent to provide a fair and objective process that yields the highest quality professional services at a fair and reasonable price.

The City of San José Public Works Department seeks responsible Engineering Design Consultant firms to submit Statement of Qualifications (SOQ) demonstrating relevant experience and ability to provide professional services for the Project listed in this Request for Qualifications. **The top rated consultant, as determined via this consultant selection process, will be selected to begin negotiations for the Project.**

The Request for Qualifications package may be obtained on the City's Bid Hotline Information website,

**[http://www.ci.san-jose.ca.us/pub\\_wrks/cip/BidHotline.htm](http://www.ci.san-jose.ca.us/pub_wrks/cip/BidHotline.htm)**

Or, by contacting: :

**Lili Matthews**

**City of San Jose, Department of Public Works**

**City Facilities Architectural Services**

**Telephone: 408-535-8398; e-mail: [lili.matthews@sanjoseca.gov](mailto:lili.matthews@sanjoseca.gov)**

**FILING OF SUBMITTALS**

A sealed SOQ package must be received by the City of San José, on or before

**Friday, March 7, 2008, at 5:00 PM**

It is the sole responsibility of the Consultant to see that the submittal is received before the stated deadline. Failure to provide the information requested herein prior to the time and date specified above will preclude participation in the selection process.

**END OF NOTICE**

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# **Request for Qualification Statement**

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## **Engineering Design Consultant Services For the City of San Jose**

**AUXILIARY CHILLED WATER SYSTEM FOR THE CITY HALL NETWORK  
OPERATIONS CENTER**

**Issue Date: February 19, 2008**

**Due Date: 5:00 PM, March 7, 2008**

**CITY OF SAN JOSE  
Department of Public Works  
City Facilities Architectural Services Division  
200 E. Santa Clara St., 6<sup>th</sup> Floor  
San Jose, CA 95113-1905**

**Attn: Lili Matthews**

## RFQ: ARCHITECTURAL FIRMS

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CITY FACILITIES ARCHITECTURAL SERVICES

*Department of Public Works*

To: **ENGINEERING FIRMS**

Re: REQUEST FOR QUALIFICATIONS (RFQ)  
ENGINEERING CONSULTANT DESIGN SERVICES

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### **I. INTRODUCTION**

The City of San José - City Facilities Architectural Services Division is seeking firms or individuals to provide engineering consultant services to the City's Department of Public Works. The selected firm or individuals will be required to provide multidiscipline engineering services for the Project as identified below.

The Request for Qualifications (RFQ) identifies the general project scope and procedures for Consultant involvement in the consultant selection process. Responding Consultants shall have relevant experience and the ability to provide professional services for the projects described below.

### **II. PROJECT**

#### **AUXILIARY CHILLED WATER SYSTEM FOR THE CITY HALL NETWORK OPERATIONS CENTER**

The City is seeking to select one engineering consultant to provide engineering consultant services including: conceptual design, schematic design, design development, construction documents and construction administration for a backup emergency auxiliary chilled water system at San José City Hall ("Project"). The estimated chilling capacity for the backup auxiliary chilled water system (Chiller) is approximately 200 tons to be mounted atop of the existing "Wing" roof of San Jose City Hall. The existing City Hall Network Operations Center contains approximately 450 servers. The Chiller project will require assessment of existing mechanical systems and structural capacity of the existing roof. The Chiller will need an architectural screen that is in the same urban language as street frontage. In addition other disciplines will be required, including electrical, controls, vibration analysis and acoustic control.

### **III. CONSULTANT SCOPE OF SERVICES:**

#### **A. Tasks per Phases:**

##### **1. Programming, Conceptual Plan, and Design Services:**

- a. Collect existing information relevant to the Project.
- b. Assess feasibility through site visits and the study of available record for mechanical, electrical, emergency power, and structural data.
- c. Develop Project scope, schedule and public traffic control.
- d. Coordinate work with in various City Departments such as: Traffic, General Services, Bureau of Fire prevention, Public Works, Information Technology and Planning.

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- e. Coordinate with local Utility companies.
- f. Prepare illustrative plans and other graphics for presentation – character sketches, detail plans and sections.
- g. Prepare preliminary cost estimates.
- h. Present plan presentations to City.

### **2. Contract Document Services:**

- a. Prepare detailed construction drawings based on City approved Project design.
- b. Prepare written technical specifications for construction of the City approved Project design.
- c. Assemble City of San Jose - Special Provisions document including the contract bid documents and the technical specifications.
- d. Prepare detailed cost estimates.

### **3. Bid and Construction Administration:**

- a. Assist with pre-bid questions, clarifications and preparation of addenda.
- b. Review all material submittals from the contractor for compliance with the construction specifications.
- c. Effectively manage the construction according to the bid documents.
- d. Assist in response to clarification requests and the preparation of Contract Change Orders (CCO).
- e. Evaluate CCO proposals.
- f. Provide Record Documents at Project Close-out.

- B. The Consultant shall provide expertise and/or hire and coordinate with the proper subconsultants in other related professional disciplines as required but not limited to the following:

Mechanical Engineering  
Structural Engineering  
Electrical Engineering  
Architectural Design

Waterproofing  
Cost Estimating  
Construction Observation / Administration  
Acoustics

- C. The Consultant shall be familiar with all applicable Federal, State, and Local laws and ordinances, regulations, Codes and other regulatory procedures including, but not limited to: Americans with Disabilities Act (ADA), the California Building Code (CBC), California Mechanical Code (CMC), California Plumbing Code (CPC), California Electric Code (CEC), California Fire Code (CFC), American Society of Testing and Materials (ASTM), City Standard Specifications and Details and Policies.

## **IV. CONSULTANT SELECTION POLICY:**

In accordance with the Qualifications Based Consultant Selection Policy, Screening Panel representatives from the Implementing Department (Public Works) and Owner Department (General Services) will apply a scoring matrix based on the evaluating criteria specified in this RFQ to establish a ranked consultant list best matching the Owner Department's needs. The numerically ranked consultant short list based upon the screening qualifications scores are used to determine the candidates that shall be interviewed.

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For the purposes of this solicitation, the Screening Panel shall determine the top four ranked candidates for interviews. The highest ranked consultant from the interviews will be selected to negotiate fees for the Project.

### V. STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL:

- A. **Deliverables:** Submit three (3) copies of the Statement of Qualifications, sectioned using divider tabs corresponding to:

Prerequisite:	Cover Letter
	Firm Profile
	Local Business Enterprise
Experience:	Completed Projects
	Current Projects
Project Approach:	Budget, Schedule and Quality
	Communication and Presentation

- B. The complete Qualification Statement should be delivered via one of the many services available or hand delivered to:

1. **CITY OF SAN JOSE, Department of Public Works /  
City Facilities Architectural Services  
200 E. Santa Clara St., 6<sup>th</sup> Floor  
San Jose, CA 95113-1905  
Attn.: Lili Matthews**

2. Statements must be received at the above address no later than **5:00 PM, March 7, 2008**. The City will not accept any SOQ after this time. Identify the submission by including the following information on the outside of the package.

**Re: SOQ for Engineering Consultant Design Services**

3. No oversize drawings (larger than 8-1/2 x 11), shall be included in the submittal. The completed submittal shall not exceed Fifty (50) pages and shall be completely comprised of paper that can be recycled.
4. Identify in the submittal subconsultants per discipline, however do NOT include qualifications of subconsultants in this Statement of Qualifications.
5. Statements of Qualifications will not be maintained after 60 days or returned.
6. Facsimile, emailed or electronic format proposals are not acceptable.
7. This Request for Qualification Statement does not include provisions for any direct reimbursement of statement preparation costs.

- C. **Prerequisite Information:**

In order to be considered, all requested qualification information below shall be submitted. All prospective Consultants must complete and submit all qualification and other supplemental information, in one complete package by the date stated below. The City will not accept information or documents from other parties than the submitting consultant.

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1. Provide a Cover Letter signed by an authorized representative of the firm to the City of San Jose requesting interview selection consideration for the Project or projects noted in this solicitation stating general qualifications, expertise and ability to perform meet the scope of services as described in this RFQ.
  - a. Include a brief statement acknowledging that the information provided in the SOQ is true, accurate and represents the most current information available as of the date of this RFQ.
  - b. Include a brief statement the Consultant's willingness to acceptance of the City's standard Agreement for Professional Consultant Services as is, with no modifications. See Attachment "A".
  - c. Provide a statement that the firm can obtain the insurance requirements as stated in the attachment "B" Insurance Requirements for Consultants in subsections A. Minimum Scope of Insurance and with the minimum Limits of Insurance as noted in subsection B. Minimum Limits of Insurance.
  - d. Provide a brief statement that the firm has the ability to submit construction documents in AutoCAD R2000 or later version, and/or a CADD software interchangeable to AutoCAD format.
  - e. Include a brief two (2) sentence statement explaining the reason of why your firm is interested in providing consulting services on this Project, and how it relates to your expertise. Refer to the Schedule section of this RFQ for approximate dates of Project to start.
  - f. Disclose all conflicts of interest (See Attachment D).
  - g. Acknowledge and agree to comply with the City's Gift Ordinance and Code of Ethics (See Attachment E).
2. Provide in outline form a Consultant Firm Profile: responding to each of item below:
  - a. Name of firm, address, telephone and fax number(s).
  - b. The primary firm contact, email, and State license.
  - c. Include a brief summary of firm staff professionals and technical profile including number of personnel by type and positions. And provide attached resumes of the proposed Project team members that will work on any of the identified Projects.
  - d. Provide Professional References, include: Contact name, position, telephone number, and relationship to Project.
3. Local & Small Business Enterprises: Identify in the form attached (Attachment C) if your firm (not your subconsultants) is a Local Business Enterprise: The City of San José encourages participation of local firms in its Project. By definition, a local firm is one who has a business office within the Santa Clara County limits **AND** has, at least, one full time employee at that address. If you qualify as a Local Business Enterprise, you may also qualify as a Small Business Enterprise if the total number of employees (regardless of where they are located) is 35 or fewer.

### **D. Screening Panel Selection Criteria:**

The information requested within this RFQ will be scored by the Screening Panel Board. The four (4) highest ranked firms selected by the Screening Panel Board will be interviewed by the Interview Board. The Screening Panel Board evaluation will consist of a matrix totaling 100 points.

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### 1. Firm's Experience:

#### a. **Completed Projects** (up to 30 points)

Provide a narrative and graphic composition of completed Projects with appropriate relevance demonstrating:

- i. Ability to design mechanical and electrical systems of similar magnitude.
- ii. Ability to maintain user requirements while responding to unique Project conditions or client needs.

Include project name and location, scope of the consultant's work, project description, year completed, on-budget/on-time summary. Include Budgeted Construction Cost, Bid results and Final construction cost. Identify duration of design engineering phase, and construction phase. Provide owner's name and address. Include two projects with a few photographic images for each project.

#### b. **Current Projects** (up to 30 points)

Provide a narrative and graphic composition of current projects in design phase or projects under construction demonstrating:

- i. Ability to design mechanical and electrical systems of similar magnitude.
- ii. Ability to maintain user requirements while responding to unique project conditions or client needs.

Include project name and location, scope of the consultant's work, project description, year to be completed, on-budget/on-time summary, including budgeted / Engineered Construction cost. Identify duration of design phase, and estimated duration of construction phase. Include two projects with a few photographic images for each project.

### 2. Firms Project Approach:

#### a. **Budget, Schedule and Quality** (up to 15 points)

Provide a narrative and graphic composition of:

- i. The ability to meet project budgets. Identify past success producing accurate cost estimates for projects and familiarity with the local construction economy and costs.
- ii. Your firm's ability to support an aggressive project schedule.
- iii. Your firm's experience in documentation, quality control and plan check procedures.

#### b. **Communication and Presentation** (up to 15 points)

Provide a narrative and graphic composition of:

- i. Identify your firm's ability and/or approach to manage and effectively communicate graphically, including presentations to the City of San Jose.
- ii. Your firm's experience working with a public agency.

### 3. Local Business Enterprise: as described in Section V.C-3 (up to 10 points) (attachment C).

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### **VI. RFQ SCHEDULE**

- |  |   |
|--|---|
| A. Release of RFQ:                         | February 19, 2008                                   |
| B. Proposals Due:                          | March 7, 2008                                       |
| C. Short List Notification:                | Within 2 to 3 weeks after receipt of RFQ responses. |
| D. Interview of Firms/Selection:           | Within 2 weeks after notification.                  |
| E. Start Date of Contract fee negotiation: | Within 2 to 3 weeks after the interview date.       |

### **VII. QUALIFICATION STATEMENT**

The City will rate prospective Consultants/Firms for this work using only objective criteria based upon the information obtained from the Qualification Statements. The City reserves the right to verify from other available sources the information provided by the Consultant and to rely upon such information gathered during the verification process. The City shall review each SOQ and establish a numeric score based upon written evaluation criteria. Consideration of a prospective Consultant's qualifications will be made only if the prospective Consultant meets all the screening selection criteria. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information.

Any Consultant deemed not qualified, or Consultants whose rating changes sufficiently to disqualify them, will be notified in writing. No Consultant shall have the right to an appeal based upon an incomplete or late submission of the qualification statement.

- A. **Request for Supplemental Information:** The City reserves the right to require, from any or all consultant candidates, supplemental information that clarifies the submitted materials.
- B. **Questions:** All questions regarding this solicitation should be directed to the City Representative listed. Do not attempt to contact any other City members regarding yours, or anyone else's Qualification Statement. Contact with representatives other than the City's designated contact person as listed in this RFQ is grounds for disqualification. Notwithstanding the preceding sentence, nothing in this RFQ shall prohibit any member of a prospective Consultant's firm or any persons working for or representing a prospective consultant from communicating with any person in the City, including, but not limited to, the City Council, regarding an alleged failure of a City employee to follow the procedures or requirements governing the request for qualifications, or any alleged misconduct or impropriety of a City employee related to the request for qualifications. All additional information being requested from the City from the interested party will be made known only in writing to all Consultants in the pre-qualified list in an addenda format. If any, the addenda will be released no later than 3 days from the proposal due date. The addenda will become part of this RFQ. The City Representative is Lili Matthews who can be reached by email at [lili.matthews@sanjoseca.gov](mailto:lili.matthews@sanjoseca.gov).
- C. The Consultant shall only rely on this Request for Qualification document and any subsequent written supplement issued by the City for preparation of the submittal. Consultants shall not rely on any other written or any oral statements of the City or its officers, directors, employees, or agents regarding the overall project or the package in preparing and submitting the submission.



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- D. **Incomplete Qualification Statements:** Incomplete and/or unsigned submissions will not be considered. However, if a submission is incomplete and if it appears that the omission can be corrected promptly, the affected firm may be contacted and offered the opportunity to complete the statements and provide the required information within a prescribed period of time, which will not be extended. If a firm does not respond within the time stated, the Qualification Statement will not be considered.
- E. **Rejection of Submitted Requests for Qualification:** Consultant Statement of Qualifications (SOQ) that are not current, accurate, and/or completed accurately to the prescribed format defined shall be considered non-responsive and eliminated from further consideration.
  - 1. The City reserves the right to waive minor irregularities in the SOQ format.
  - 2. The City reserves the sole right to evaluate the Consultant candidate's qualifications and reject any or all SOQ.
- F. **Selection Process Termination:** The City reserves the right to accept or reject any item or group(s) of items of a response. The City reserves the right to terminate the selection process, at any time, without making an award to any or all consultants on the ranked candidate list. The City shall not be obligated to respond to any SOQ submitted, nor be legally bound in any manner by the submission of the SOQ. The City may also, at its sole discretion, choose a ranked Consultant or Consultants to perform any or all of the individual project work phases. The City Manager or City Council must approve the final agreement with the Consultant before any work may start on the Project.
- G. **California Public Records Act:** Responses to this RFQ become the exclusive property of the City. At such time as the Public Works Department recommends a Consultant to the City Council, or City Manager as applicable, all proposals received in response to this RFQ become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Engineering Consultant as business or trade secrets and plainly marked as "Confidential", "Trade Secret", or Proprietary". The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential", "Trade Secret", or Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal as "Confidential", "Trade Secret," or Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José may not be in a position to establish that the information which a consultant submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret", or "Proprietary", the City will provide the consultant who submitted the information with reasonable notice to allow said consultant to seek protection from disclosure by a court of competent jurisdiction.

## **VIII. QUALIFICATION STATEMENT REVIEW**

The City will rate prospective Consultants/Firms for this work using only objective criteria based upon the information obtained from the Qualification Statements. The City reserves the right to

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verify from other available sources the information provided by the Consultant and to rely upon such information gathered during the verification process. The City shall review each SOQ and establish a numeric score based upon written evaluation criteria. Consideration of a prospective Consultant's qualifications will be made only if the prospective Consultant meets all the screening selection criteria as specified in this RFQ. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information. Any Consultant deemed not qualified, or Consultants whose rating changes sufficiently to disqualify them, will be notified in writing.

### **IX. SELECTED CONSULTANTS**

Consultants will be ranked during the screening process. The rankings will be used to select one Consultant for this solicitation. Consultant selection for work is not a guarantee that a project will be awarded. The City's decision will be based on objective evaluation criteria. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information. A agreement for professional consultant services and council approval is required prior to start of work.

**Contract: The selected firm(s) or individual(s) will execute a standard form consultant agreement in the form set forth in Attachment "A" of this RFQ. Consultant's submission of a Statement of Qualifications in response to this RFQ shall constitute Consultant's agreement to the provisions contained in the standard form consultant agreement contained in Attachment "A" of this RFQ.**

**The City and the selected firms or individuals will negotiate a professional services contract for the time period applicable to the Project duration and scope of work. WON'T YOU ALSO NEGOTIATE SCOPE AND COMPENSATION?The City reserves the right to extend the term of the contract and augment the amount of the contract with the agreement of the selected firm or individual, pending approval by the City of San José City Council.**

### **X. DISQUALIFICATION**

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- A. Evidence of collusion, directly or indirectly, among Consultants in regard to the amount, terms, or conditions of this proposal;
- B. Any attempt to improperly influence any member of the selection staff;
- C. Existence of any lawsuit, unresolved contractual claim or dispute between Consultants and the City;
- D. Evidence of incorrect information submitted as a part of the SOQ;
- E. Evidence of Consultant's inability to successfully complete the responsibilities and obligations of the SOQ; and
- F. Consultant's default under any agreement, which results in termination of the agreement.

### **XI. CITY BUSINESS TAX (BUSINESS LICENSE)**

Any consultant doing business with the City of San José is required to pay a City of San José business tax. Successful consultant(s) must show proof of the tax being paid or pay the City

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business tax at time of contract award. Please contact the City's Treasury Division of the Finance Department at (408) 535-7055 to determine applicable costs.

### **XII. PROHIBITION OF GIFTS**

City officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms or corporations either engaged in business with the City, or proposing to do business with the City. The offering of any illegal gift shall be grounds to disqualify a Consultant. To avoid even the appearance of impropriety, Consultants should not offer any gifts or souvenirs, even of a minimal value, to City officers or employees. The successful Consultant shall be subject to the City of San Jose gift prohibition. Said prohibition is found in Chapter 12.08 of the San Jose Municipal Code (See Attachment E). The successful Consultant agrees not to offer a City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift by Chapter 12.08 shall constitute a material breach of the Agreement by the successful Consultant. In addition to other remedies the City may have by law or equity, City may terminate the Agreement for such breach.

### **XII. EXAMINATION OF PROPOSED MATERIAL**

The submission of a proposal shall be deemed a representation and certification by the Consultant that they have investigated all aspects of the RFQ, that they are aware of the applicable facts pertaining to the RFQ process, its procedures and requirements, and that they have read and understood the RFQ. No request for modification of the SOQ shall be considered after it has been submitted on grounds that the Consultant was not fully informed as to any fact or condition.

### **XIII. NON-CONFORMING PROPOSAL**

A proposal shall be prepared and submitted in accordance with the provisions of these RFQ instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

### **XIII. NON-DISCRIMINATION/NON-PREFERENTIAL TREATMENT**

The successful Consultant shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San Jose contracts.

### **XIV. ADDITIONAL TERMS AND CONDITIONS**

- A. This RFQ does not commit the City to pay any costs incurred in the submission of the proposal or in making any necessary studies or analysis in preparation of submission of the proposal.
- B. **An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and the successful Consultant**

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### **XV. ATTACHMENTS**

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Attachment A:	Standard Form of Consultant Agreement (Sample Master)
Attachment B:	Insurance Requirements for Consultants
Attachment C:	Request for Contracting Preference for Local and Small Businesses
Attachment D:	Conflict of Interest Form
Attachment E:	Gift Ordinance
Attachment F:	SOQ Form

## **ATTACHMENT A**

### **AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES BETWEEN**

**THE CITY OF SAN JOSE**

**AND**

*a Consultant*

**FOR**

**Auxiliary Chilled Water System for the City Hall Network Operations Center**

This AGREEMENT is made and entered into this \_\_\_\_\_ day of 2008, by and between the City of San Jose, a municipal corporation (hereinafter "CITY"), *the Consultant*, a \_\_\_\_\_ (hereinafter "CONSULTANT"), authorized to conduct business in the State of California.

### **RECITALS**

The purpose for which this AGREEMENT is made and all pertinent recitals are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

### **THE PARTIES HEREBY AGREE AS FOLLOWS:**

#### **SECTION 1. SCOPE OF SERVICES.**

The CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

#### **SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be from date of execution of this AGREEMENT as written above through *the completion date*, inclusive, subject to the provisions of Section 12 of this AGREEMENT.

#### **SECTION 3. SCHEDULE OF PERFORMANCE.**

The CONSULTANT services shall be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

#### **SECTION 4. COMPENSATION.**

The compensation paid to the CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed \_\_\_\_\_ (\$ ) Dollars. The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

#### **SECTION 5. METHOD OF PAYMENT.**

Each month, CONSULTANT shall furnish to the CITY a statement of the services formed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures. Such statement shall be sent to the following address:

The City of San Jose, Department of Public Works  
City Facility Services Division  
Attention: Public Works (*Lili Matthews*)  
200 E. Santa Clara 6<sup>th</sup> Floor  
San Jose, CA 95113

**SECTION 6. INDEPENDENT CONTRACTOR.**

It is understood and agreed that the CONSULTANT, in the performance of the work and services agreed to be performed by the CONSULTANT, shall act as and be an independent contractor and not an agent or employee of the CITY; and as an independent contractor, the CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to the CITY's employees, and the CONSULTANT hereby expressly waives any claim it may have to any such rights.

**SECTION 7. ASSIGNABILITY.**

The parties agree that the expertise and experience of the CONSULTANT are material considerations for this AGREEMENT. The CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of the CONSULTANT's obligations hereunder, without the prior written consent of the CITY. Any attempt by the CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 8. SUBCONSULTANTS.**

- A. Notwithstanding Section 7 above, the CONSULTANT may use SUBCONSULTANTS in performing the services under this AGREEMENT upon prior written approval by the CITY's Director of Public Works or the Directors' designee.
- B. The CONSULTANT shall be responsible for directing the services of the approved SUBCONSULTANTS and for payment of any compensation due. The CITY assumes no responsibility whatsoever concerning SUBCONSULTANT compensation.
- C. The CONSULTANT shall change or add SUBCONSULTANTS only with the prior written approval of the CITY's Public Works Director or the Directors' designee.

**SECTION 9 INDEMNIFICATION.**

The CONSULTANT shall defend, indemnify and hold harmless the CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from services performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by the CONSULTANT's officers, employees or agents. The acceptance of said services and duties by the CITY shall not operate as a waiver of such right of indemnification. All of the CONSULTANT's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

**SECTION 10. INSURANCE REQUIREMENTS.**

The CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Human Resources or the Director's authorized designee as to form and content. These requirements are subject to amendment or

waiver if so approved in writing by the Risk Manager. The CONSULTANT agrees to provide the CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

**SECTION 11. NONDISCRIMINATION.**

The CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

**SECTION 12. TERMINATION.**

- A. The CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.
- B. If the CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, the CITY may terminate this AGREEMENT immediately upon written notice.
- C. The CITY's Director of Public Works is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. In the event of termination, the CONSULTANT shall deliver to the CITY copies of all reports, documents, and other work performed by the CONSULTANT under this AGREEMENT, and upon receipt thereof, The CITY shall pay the CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

**SECTION 13. GOVERNING LAW.**

The CITY and the CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

**SECTION 14. COMPLIANCE WITH LAWS.**

The CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

**SECTION 15. CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for the CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the CITY or as required by law.

**SECTION 16. OWNERSHIP OF MATERIALS.**

All reports, documents, electronic equivalents or other materials developed or discovered by the CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of the CITY without restriction or limitation upon their use.

**SECTION 17. WAIVER.**

The CONSULTANT agrees that waiver by the CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the CITY of the performance of any work or services by the CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 18. THE CONSULTANT'S BOOKS AND RECORDS.**

- A. The CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to the CONSULTANT pursuant to this AGREEMENT.
- B. The CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to the CITY, at any time during regular business hours, upon written request by the City Attorney, the City Auditor, the City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the CITY for inspection at the City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of the CONSULTANT's business, the CITY may, by written request by any of the above-named officers, require that custody of the records be given to the CITY and that the records and documents be maintained in the City Hall. Access to such records and documents shall be granted to any party authorized by the CONSULTANT, the CONSULTANT's representatives, or the CONSULTANT's successor-in-interest.

**SECTION 19. CONFLICT OF INTEREST.**

The CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

**SECTION 20. GIFTS.**

- A. The CONSULTANT is familiar with the CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. The CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by the CONSULTANT. In addition to any other remedies the CITY may have in law or equity, the CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.



## **SECTION 21. PERSONNEL**

The CONSULTANT acknowledges that a material consideration in the CITY entering into this AGREEMENT was the CONSULTANT'S commitment of \_\_\_\_\_ as the individual in charge of the project. The CONSULTANT agrees that as long as this AGREEMENT is in effect and that individual remains employed by the CONSULTANT, their services will be dedicated to the project as the individual with day to day control over the Project throughout the term of this AGREEMENT. Within five (5) business days of the execution of this AGREEMENT and the execution of any subsequent service order, the CONSULTANT shall provide the CITY with the names and resumes of individuals assigned to the Project. The CITY must approve changes to the individuals assigned to the Project, in writing, and replacement personnel must have equivalent or better qualifications.

## **SECTION 22. DISQUALIFICATION OF FORMER EMPLOYEES.**

The CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of the CITY in matters that are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). The CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of the CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

## **SECTION 23. SPECIAL PROVISIONS.**

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

## **SECTION 24. NOTICES.**

All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To The CITY: name, address, telephone, and fax number

To The CONSULTANT: name, address, telephone, and fax number

**All notices of a legal nature including any claims against the CITY, its officers, or employees shall also be served in the manner specified above to the following address:**

The City of San Jose  
Glenn Schwarzbach, City Attorney  
200 E. Santa Clara St., 16<sup>th</sup> Floor  
San Jose, CA 95113-1905

A notice shall be deemed effective on the date of personal delivery by hand or the date of receipt of facsimile transmission (with verification of receipt) or, if mailed, three (3) days after deposit in the mail.

**SECTION 25.**        **VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**SECTION 26.**        **PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 27.**        **SEVERABILITY.**

If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**SECTION 28.**        **REPRESENTATION OF AUTHORITY**

The person executing this AGREEMENT on behalf of the CONSULTANT does hereby represent and warrant that the CONSULTANT is a duly authorized and existing \_\_\_\_\_, that the CONSULTANT is and shall remain during the term of this AGREEMENT qualified to do business in the State of California, that the CONSULTANT has full right, power and authority to enter into this AGREEMENT and to carry out all actions contemplated by this AGREEMENT, that the execution and delivery of this AGREEMENT were duly authorized by proper action of the CONSULTANT and no consent, authorization or approval of any person is necessary in connection with such execution, delivery and performance of this AGREEMENT except as have been obtained and are in full force and effect, and that this AGREEMENT constitutes the valid, binding and enforceable obligation of the CONSULTANT. Upon the CITY's request, the CONSULTANT shall provide the CITY with evidence reasonably satisfactory to the CITY confirming the foregoing representations and warranties.

**WITNESS THE EXECUTION HEREOF** on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

\_\_\_\_\_  
GLENN SCHWARZBACH  
Senior Deputy City Attorney

By \_\_\_\_\_  
DEANNA SANTANA  
Deputy City Manager

200 E. Santa Clara St., Wing 2<sup>nd</sup> Floor  
San Jose, CA 95113-1905

“CONSULTANT”

By \_\_\_\_\_  
Corporate officer, partner, or sole proprietor

Company address  
Employer I.D.

## **EXHIBIT A**

### **RECITALS**

- A. The specialized requirements of the Project activities are more efficiently satisfied by the retention of a private, professional Consultant Firm.
- B. The CONSULTANT possesses such specialized professional skill and ability.
- C. The purpose of this AGREEMENT is to retain the CONSULTANT to perform the Project design services specified in Section 1 of this AGREEMENT.

**END OF EXHIBIT A**

## **ATTACHMENT B**

### **INSURANCE REQUIREMENTS FOR CONSULTANTS**

CONSULTANT shall procure and maintain the following insurance coverage for the duration of the contract in connection with work performed by the CONSULTANT, his agents, representatives, employees or subconsultants. The cost of all such insurance shall be included in the Consultant's proposed price for consultant services.

#### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including products and completed operations, X, C, U (Explosion, Collapse & Underground) where applicable; and
2. Insurance Services Office form number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and endorsement CA 0025. Coverage shall also to include Code 8 "hired autos" and Code 9 "non-owned" autos.
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability Insurance.
4. Errors and Omissions Liability insurance appropriate to the CONSULTANT or subconsultant's profession.

#### **B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.
4. Errors and Omissions Liability: \$1,000,000 per occurrence.

#### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retention shall be declared to and approved by the City.

1. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officials, employees, agents and contractors; or the CONSULTANTS shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

#### **D. Other Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage

- a. The City, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased or used by the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The CONSULTANT's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
- d. **Coverage shall state that the CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.**

2. All Coverage

- a. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days prior written notice has been given to the City.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

F. Verification of Coverage

CONSULTANT shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be submitted with the CONSULTANT Qualifications Questionnaire **and** mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José, Department of Finance  
200 East Santa Clara St., Wing- 3<sup>rd</sup> floor, San José, CA 95113

G. Subconsultants

CONSULTANT shall include all subconsultants as insured under its policies or shall obtain separate certificates and endorsements for each subconsultant.

End of Attachment B

### Attachment C

#### **City of San Jose Request for Contracting Preference for Local and Small Businesses**

The San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise\* or Small Business Enterprise\*\* and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a nonlocal vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional 5% to 10% points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

<b>Type of Procurement</b>	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input type="checkbox"/> Request for Proposal
<b>Type of Preference</b>	<input type="checkbox"/> Price is Determinative	<input type="checkbox"/> Price is Not Determinative	
<b>Amount of Preference</b>	LBE preference = 2.5% of <b>Cost</b> SBE preference = 2.5% of <b>Cost</b>	LBE preference = 5% of <b>Points</b> SBE preference = 5% of <b>Points</b>	

**In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.**

<b>Business Name</b>			
<b>Business Address</b>			
<b>Telephone No.</b>			
<b>Type of Business</b>	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)

#### **\*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**

**In order to qualify as an LBE you must provide the following information:**

**Current San Jose Business Tax Certificate Number**

**Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:**

#### **\*\*SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business --NOT just local employees, or employees working in the office address given above.

**Please state the number of employees that your Business has:**

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*):    ☐ Local Business Enterprise    ☐ Small Business Enterprise  
I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: \_\_\_\_\_, California

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Print name \_\_\_\_\_

End of Attachment C



## ATTACHMENT D

### CONFLICT OF INTEREST FORM

To be completed by consultants making proposals.

**NAME**

**DATE**

**PROPOSED ASSIGNMENT: Engineering Consultant Services**

In order for the City to assess whether the personnel proposed to be assigned by the successful Proposer to work on the Proposed Assignment have a conflict of interest, this form must be completed by each person that the Proposer intends to assign.

Questions	Yes (Provide Details)	No
1. Do you have any official, professional, financial or personal relationships with any person or firm that might affect your judgment or your ability to provide services to the City that are fair and impartial?		
2. Stock and Investments  (a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?  (b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment?  (c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?  (d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?  If the answer is <b>yes</b> to any of the above questions, please provide the name of the company and the amount of the stock or investment.		
3. Employment & Consulting  (a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?  (b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?  (c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?		

If the answer is **yes** to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained.

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<p>4. Payments or Gifts</p> <p>(d) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(e) Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>		
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the name of the entity, and the title of the position held.</p>		

If during the course of the evaluation, any personal, external, or organizational impairments occur that may affect your ability to do the work and report findings impartially, notify the Program Manager immediately.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

## **ATTACHMENT E**

### **GIFT ORDINANCE**

#### **Municipal Code, Chapter 12.08 Prohibition of Gifts**

##### **12.08.010      Gifts Prohibited**

- A. No officer or designated employee of the City or its Redevelopment Agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this Chapter.
- B. “Person subject to the decision-making or recommending authority” means any individual, firm or entity whose interest or whose employer's or client's interest:
  - 1. Has been materially affected by the work of such officer or employee within the two (2) years prior to the time the gift is given; or
  - 2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

##### **12.08.015      Political Reform Act Requirements**

- A. The reporting and disclosure of gifts shall be done in accordance with the requirements of the Political Reform Act (California Government Code Section 81000 *et seq.*, as amended ) and the requirements in this Chapter.
- B. The gift limitations and disqualification requirements under the Political Reform Act are applicable to gifts which are not prohibited by this Chapter.

##### **12.08.020      Gift Defined**

“Gift” means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

- A. As used in this Chapter, the term “gift” includes:
  - 1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public.
  - 2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.
  - 3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.
- B. As used in this Chapter, the term “gift” does not include:
  - 1. Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.
  - 2. Any devise or inheritance.

### **12.08.030      Gifts Not Prohibited**

This Chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

- A.      Gifts with a value less than fifty dollars (\$50): Any gift, including meals and beverages provided to an officer or employee in a business or social setting, that has a value less than fifty dollars (\$50), as long as the total value of all such gifts received from any one donor does not exceed fifty dollars (\$50) or more in any calendar year.
- B.      Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.
- C.      Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual's primary residence.
- D.      Reciprocal gifts: Presents exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.
- E.      Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.
- F.      Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include theatrical productions and art exhibits; political events include political fundraisers.
  - 1.      Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.
  - 2.      A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.
- G.      Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty (150) miles from San José and where the situs of the employment will be at least the same distance from the City.
- H.      Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve (12) months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.
- I.      Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the City Council or Redevelopment Agency Board or which is pursuant to a written City or Redevelopment Agency policy for intrastate or interstate travel regardless of the source of payment.

- J. City or Redevelopment Agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the City or Redevelopment Agency, provided that such transportation is related to City or Redevelopment Agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five (125) miles one way. Nothing in this subsection shall be interpreted to limit the City Council's or Redevelopment Agency Board's discretion to approve travel under subsection I. above.
- K. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.
- L. Prizes and Awards from Bona Fide Competitions: A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a City or Redevelopment Agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974 as amended.
- M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.

**12.08.040      Acceptance Of Gifts**

A gift shall be deemed to have been accepted except where:

- A. It is not used, and, within thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
- B. It is treated as and remains the property of the City or the Redevelopment Agency.
- C. It is received by an officer or designated employee in his or her official capacity or as a representative of the City or Redevelopment Agency, is reported to the City Council or Agency Board, and the Council or Board approves the retention.

**12.08.050      Reporting Gifts To Domestic Partner, Spouse And Children**

- A. At the time of filing the annual disclosure statement required by the Political Reform Act or any applicable conflict-of-interest code, each City and Redevelopment Agency officer and designated employee shall file a family gift report on a form to be provided by the City Clerk.
- B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's domestic partner, spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state.
- C. For purposes of this Section, domestic partner shall mean any person registered as a domestic partner by an employee with the City of San José.